



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (“Department”) published its *Preliminary Rescission* for the new shipper review (“NSR”) of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”) on July 14, 2014.¹ The period of review (“POR”) is August 1, 2012, through July 31, 2013. As discussed below, we preliminarily found that Thanh Hung Co., Ltd. D/B/A Thanh Hung Frozen Seafood Processing Import Export Co., Ltd.’s (“Thanh Hung”) sale was non-*bona fide*, and announced our preliminary intent to rescind Thanh Hung’s NSR. For the final results of this review, we continue to find Thanh Hung’s sale to be non-*bona fide*. Therefore, because there were no other shipments or entries by Thanh Hung during the POR, we are rescinding this NSR.

DATES: EFFECTIVE DATE: (INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*).

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-4031.

¹ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Intent To Rescind Antidumping Duty New Shipper Review; 2012-2013*, 79 FR 40710 (July 14, 2014) (“*Preliminary Rescission*”).

SUPPLEMENTARY INFORMATION:

Background

As noted above, on July 14, 2014, the Department published the *Preliminary Rescission* of this NSR. Thereafter, the Department extended the time period for issuing the final results to December 1, 2014.² On October 2, 2014, the Department received a case brief from Thanh Hung.³ On October 6, 2014, the Department received a rebuttal brief from the Catfish Farmers of America and individual U.S. catfish processors (“Petitioners”).⁴ On November 13, 2014, the Department conducted a public hearing regarding the NSR.

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus*. These products are classifiable under tariff article codes 0304.29.6033, 0304.62.0020, 0305.59.0000, 0305.59.4000, 1604.19.2000, 1604.19.2100, 1604.19.3000, 1604.19.3100, 1604.19.4000, 1604.19.4100, 1604.19.5000, 1604.19.5100, 1604.19.6100 and 1604.19.8100 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the

² See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Susan S. Pulongbarit, Sr. International Trade Analyst, Office V, Antidumping and Countervailing Duty Operations, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Antidumping Duty New Shipper Review of Thanh Hung Co., Ltd., dated September 18, 2014.

³ See Letter from Thanh Hung to the Department regarding Refile & Redacted Direct Case Brief: New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Review Period – 8/1/12-7/31/13, dated October 2, 2014 (“Thanh Hung Case Brief”). We note that this is a refiled and redacted case brief. See Memo to File, from Susan Pulongbarit, Sr. International Trade Analyst, regarding New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: New Factual Information, dated October 3, 2014.

⁴ See Letter from Petitioners to the Department regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rebuttal Brief, dated October 6, 2014 (“Petitioners Rebuttal Brief”).

Harmonized Tariff Schedule of the United States (“HTSUS”).⁵ Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

For a full description of the scope, *see* “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of New Shipper Review,” dated concurrently with this notice (“I&D Memo”).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the I&D Memo, which is hereby adopted by this Notice. A list of the issues which parties raised is attached to this notice as an Appendix. The I&D Memo is a public document and is on file in the Central Records Unit (“CRU”), Room 7046 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”).⁶ ACCESS is available to registered users at <http://access.trade.gov> and in the CRU. In addition, a complete version of the I&D Memo can be accessed directly on the internet at <http://trade.gov/enforcement/frn/index.html>. The signed I&D Memo and the electronic versions of the I&D Memo are identical in content.

Bona Fide Analysis

⁵ Until July 1, 2004, these products were classifiable under HTSUS 0304.20.6030 (Frozen Catfish Fillets), 0304.20.6096 (Frozen Fish Fillets, NESOI), 0304.20.6043 (Frozen Freshwater Fish Fillets) and 0304.20.6057 (Frozen Sole Fillets). Until February 1, 2007, these products were classifiable under HTSUS 0304.20.6033 (Frozen Fish Fillets of the species *Pangasius*, including basa and tra). On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (“CBP”): 1604.19.2000 and 1604.19.3000. On January 30, 2012, the Department added eight HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

⁶ On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance’s AD and CVD Centralized Electronic Service System (“IA ACCESS”) to AD and CVD Centralized Electronic Service System (“ACCESS”). The website location was changed from <http://iaaccess.trade.gov> to <http://access.trade.gov>. The Final Rule changing the references to the Regulations can be found at 79 FR 69046.

For the *Preliminary Rescission*, the Department analyzed the *bona fides* of Thanh Hung's sale and preliminarily found it to be non-*bona fide*.⁷ Based on the Department's complete analysis of all the information and comments on the record of this review regarding the *bona fides* of Thanh Hung's NSR sale, the Department continues to find Thanh Hung's sale to be non-*bona fide* because of (a) the atypical nature of Thanh Hung's price and quantity; (b) extraordinary expenses arising from the transaction; (c) the importer's regular commercial interest; (d) atypical circumstances surrounding production; and (e) unreported connections to other entities.⁸ The Department did not base its analysis on any one factor but instead examined the totality of the evidence and comments on the record of this review to determine that Thanh Hung's sale was not *bona fide*.

Rescission of New Shipper Review

For the foregoing reasons, the Department finds that the sale of Thanh Hung is non-*bona fide* and that this sale does not provide a reasonable or reliable basis for calculating a dumping margin. Because a non-*bona fide* sale was the only sale of subject merchandise during the POR, the Department is rescinding this NSR pursuant to section 351.214(f) of the Department's regulations.

Cash Deposit Rates

The following cash deposit requirements continue to apply for all shipment of subject merchandise from Thanh Hung entered, or withdrawn from warehouse: (1) for subject merchandise produced and exported by Thanh Hung, the cash deposit rate will continue to be the

⁷ See "Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Certain Frozen Fish Fillets from the Socialist's Republic of Vietnam" from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated June 18, 2014 ("Preliminary Decision Memorandum"), and hereby adopted by this notice.

⁸ *Id.*

Vietnam-wide rate (*i.e.*, 2.39 U.S. Dollars/kg); (2) for subject merchandise exported by Thanh Hung but not manufactured by Thanh Hung, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 2.39 U.S. Dollars/kg); and (3) for subject merchandise manufactured by Thanh Hung, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to Administrative Protective Order (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this new shipper review and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.214.

Dated: November 26, 2014.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

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Appendix – Issues and Decision Memorandum

Summary
Background
Scope of the Order
Discussion of the Issues
Comment: *Bona Fide* Nature of the Sale Under Review
Recommendation

[FR Doc. 2014-28459 Filed 12/02/2014 at 8:45 am; Publication Date: 12/03/2014]